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13 on behalf of themselves and all others similarly situated*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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SHAHRIAR JABBARI and KAYLEE  
HEFFELFINGER, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

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WELLS FARGO & COMPANY and  
WELLS FARGO, N.A.,

Defendants.

Case No: 3:15-cv-02159-VC

**ALEX CHERNAVSKY AND WILLIAM  
CASTRO'S RESPONSE TO AMENDED  
STIPULATION AND AGREEMENT OF  
CLASS ACTION SETTLEMENT AND  
RELEASE**

**Date:** TBA  
**Time:** TBA  
**Place:** Courtroom 4 – 17th Floor  
**Judge:** Hon. Vince Chhabria

## INTRODUCTION

As this Court is aware, the undersigned counsel, on behalf of Alex Chernavsky and William Castro (hereinafter “*Chernavsky Plaintiffs*”) (*Chernavsky v. Wells Fargo Bank, N.A.*, No. 16-cv-06326-VC (“*Chernavsky*”)) have raised in prior submissions to this Court (and in communications to the parties) a number of concerns and issues with respect to the previously proposed settlement with Wells Fargo. (See Dkt. No. 116, *generally*, hereinafter “*Chernavsky Objection*”) Without waiving any right to appear and raise concerns with respect to the final approval process and the proposed settlement, the *Chernavsky Plaintiffs* believe that the proposed settlement has addressed most of the concerns raised by the *Chernavsky Plaintiffs*. As noted in the prior submissions to this Court, the following issues had been raised by the undersigned, and now appear to have been addressed sufficiently in this amended class action settlement to warrant preliminary approval at this stage of the settlement process:

1. As noted in the *Chernavsky* Objection at p. 6-7, filed with the Court on May 4, 2017, the *Chernavsky* Plaintiffs had concerns with the short claims period outlined in agreement which outline the terms in the Settlement Parties' initial filings (See Dkt. No. 100, hereinafter "Initial Settlement".) The Initial Settlement limited the claims period to 20-60 days. After reviewing *Chernavsky* Plaintiffs' objection, the Settlement Parties agreed to extend the claims period to 210 days after preliminary approval and 30 days after final approval. (Dkt. No. 133 p. 18.) This revised and lengthened schedule is reflected in the parties Amended Proposed Order Granting Preliminary Approval. (Dkt. No. 162-4 p. 12.) The revised and lengthened schedule adopted by the Settlement Parties after *Chernavsky* Plaintiffs' objection appears to provide sufficient time for claimants and class members to file claims under the settlement.

2. As noted in the *Chernavsky* Objection at p. 6-7, *Chernavsky* Plaintiffs had concerns with the confusing, technical, and opaque nature of the Settlement Parties' initial proposed claim form. Specifically, *Chernavsky* Plaintiffs raised the notion that Defendant Wells Fargo would undoubtedly already possess information necessary to assist claimants in filling out a claim form ("...class members expected to recall information from as far

1 back as 2002, as required by the claim process, despite the fact that the class has no  
 2 discovery information to assist with their recollection .... For those members of the class  
 3 who are not “Consultant-Identified” they must recall account information on their own.  
 4 ... These issues add up to significant additional burdens on unnamed class members, and  
 5 will provide unnecessary barriers to recovery...”). The Court apparently agreed, and  
 6 ordered the Settlement Parties to revise the claim for to include an opportunity for  
 7 claimants to explain information, to allow for substantial compliance on claim forms for  
 8 opting out and objecting, and suggested a more thorough notice procedure. (Dkt. No.  
 9 155.) The Settlement Parties then made *Chernavsky* Plaintiffs’ and the Court’s suggested  
 10 changes, vastly simplifying the notice procedure and the notices themselves. (Dkt. No.  
 11 160, *generally*.) This revised notice and claim form largely addresses *Chernavsky*  
 12 Plaintiffs’ concerns.

13 3. Similarly, *Chernavsky* Objection specifically raised the notion that the proposed claim  
 14 form had a court seal on it, “which may have the effect of scaring off potential claimants  
 15 who are unfamiliar with legal documents.” (*Chernavsky* Objection at p. 7.) The  
 16 Settlement Parties have removed the Court Seal. (Dkt. No. 162-4, 162-5.) This revised  
 17 notice addresses *Chernavsky* Plaintiffs’ concerns.

18 4. As noted in the *Chernavsky* Objection at 8-9, *Chernavsky* Plaintiffs specifically objected  
 19 to the overbroad and confusing nature of the Initial Settlement’s release. Specifically,  
 20 *Chernavsky* Plaintiffs objected that the Initial Settlement’s release had “no practical  
 21 limitation” and would release claims that “may or may not be related to the underlying  
 22 litigation.” The Court apparently agreed with this objection, ordering the Settlement  
 23 Parties to change the release “to make clear that the class members are only releasing  
 24 claims based on the identical factual predicate as the claims asserted in [the *Jabbari*  
 25 matter].” (Dkt. No. 155.) The Revised Settlement makes that change. (*See* Revised  
 26 Settlement at ¶ 2.49.) This revised release largely addresses *Chernavsky* Plaintiffs’  
 27 concerns.

1       5. As noted in the *Chernavsky* Objection at p. 7-8, *Chernavsky* Plaintiffs objected that there  
2       was no provision in the Initial Settlement which would provide online information about  
3       objections or opt-outs, or provide an online method for class members to object or opt-  
4       out. The Court apparently agreed with this objection as well, ordering the Settlement  
5       Parties to provide a “mechanism for online objections and opt-outs.” (Dkt. No. 155.) The  
6       Revised Settlement makes that change. (See Dkt. No. 160 at p. 4-5.) This revised online  
7       procedure largely addresses *Chernavsky* Plaintiffs’ concerns.

8       6. As noted in the *Chernavsky* Plaintiffs’ Objection at p. 6-7, *Chernavsky* Plaintiffs had  
9       several concerns about the confusing and hyper-technical opt-out and objection  
10       requirements. The Court apparently generally agreed with those concerns, ordering the  
11       Settlement Parties to make clear that the Revised Settlement will allow for “substantial  
12       compliance” for objecting and opting out. (Dkt. No. 155.) The Revised Settlement  
13       makes that change. (Revised Settlement at ¶¶ 12.1, 12.6.) This revised objection and  
14       opt-out procedure largely addresses *Chernavsky* Plaintiffs’ concerns.

15       7. As noted in the *Chernavsky* Plaintiffs’ Objection at p. 7, the *Chernavsky* Plaintiffs’ had  
16       concerns that the Initial Settlement invested the Settlement Administrator with absolute  
17       and final approval of the determination of a claimant’s claim and the amounts that  
18       claimant may receive. Specifically, *Chernavsky* Plaintiffs were concerned with the lack  
19       of oversight or guidance given to the Settlement Administrator and the finality of the  
20       Settlement Administrator’s judgment. The Court apparently agreed with those concerns,  
21       ordering the Settlement Parties to allow for Court scrutiny and approval of the  
22       Settlement Administrator’s determinations prior to final approval. (Dkt. No. 155.) This  
23       scrutiny and approval ordered by the Court included the potential for appointment of a  
24       special master. (*Id.*) The Revised Settlement makes the changes ordered by the Court  
25       regarding Court scrutiny over the Settlement Administrator. (Dkt. No. 160 at p. 2-3.)  
26       These changes to the Revised Settlement largely address *Chernavsky* Plaintiffs’  
27       concerns.

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In addition, as noted in the Settlement Parties submissions in favor of the Revised Settlement, other important issues have been addressed. While *Chernavsky* Plaintiffs reserve all rights to object on other issues at the final approval stage, a full review of the instant filings indicates that preliminary approval of the proposed Revised Settlement should be granted.

Dated: June 22, 2017

Respectfully submitted,

By: /s/ S. Clinton Woods

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